Supreme Court, U.S.
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No. 95-513

In The

Supreme Court of the United States

October Term, 1995

BANK MELLI IRAN; BANK MELLAT,

Petitioners,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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Algerian Accords .....*passim*

REASONS FOR DISREGARDING RESPONDENT'S OPPOSITION AND GRANTING A WRIT OF CERTIORARI

The turmoil which preceded the Algerian Accords is over. The responsibilities assumed, and obligations accepted, by the United States in adopting the Algerian Accords continue. Unless this Court confronts the seminal issue and enforces the Algerian Accords, the Banks will be irreparably prejudiced and Respondent's political propaganda (Opposition at 2-5) and misplaced reliance on politicians' rhetoric (Opposition at 8-9) will forever justify the dismissal of the Banks' Complaint in the minds of the lower court jurists that have ruled on this case to date.

I.

THE SIGNIFICANCE OF THE ISSUE PRESENTED FOR REVIEW AND THE IMPLICATIONS OF THE LOWER COURTS' RULINGS WARRANT GRANTING THE PETITION FOR WRIT OF CERTIORARI.

Uniformity of decision is not the issue. *Multiple* wrongs do not make a right. Prior omissions to recognize and to give effect to the intent of the parties to the Algerian Accords, and the implications thereof in related litigation, do not justify a decision by this Court to deny review.

The provisions of the Algerian Accords at issue in this case have general application. Similar cases will be filed in the future. The questions of law involved here can also apply to future enforcement of treaties and executive agreements.

The Algerian Accords, as an executive agreement, command enforcement of Iranian judgments. (Petition at Appendix G.) The Algerian Accords' enforcement command transcends

generally applicable law on enforcement of foreign judgments. This case is not the ordinary judgment enforcement action that Shams portrays. (Opposition at 10.) Shams' reliance on *Hilton v. Guyot*, 159 U.S. 113 (1895), is misplaced. *Hilton* involved no executive agreement and no supreme federal command for enforcement of foreign judgments.

This case presents important questions of law pursuant to Supreme Court Rule 10.1(c).

II.

THE TEXT OF THE ALGERIAN ACCORDS CONTROLS. THE ALGERIAN ACCORDS COMMAND ENFORCEMENT WITHOUT SECOND GUESSING ON DUE PROCESS GROUNDS.

Shams cannot dispute or refute the supremacy of federal law, as set forth in the Algerian Accords. United States Constitution Article VI. (Petition at Appendix I.) *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982).

The lower courts failed to heed the clear enforcement command in the Algerian Accords. Under *Sumitomo*, 457 U.S. at 180, the lower courts were required to enforce the Algerian Accords according to their terms. The Algerian Accords have no ambiguity. Nowhere do the Algerian Accords discuss due process or fair trial inquiries in connection with judgment enforcement actions.

It is true that the Algerian Accords enforcement command calls for enforcement "in accordance with U.S. law." However, as interpreted and applied by the lower courts, the command violated the intent underlying the Algerian Accords. The Algerian Accords seek to return the Shah's and his close relatives' assets to

the Islamic Republic of Iran. By disposing of the Banks' case on due process grounds, the lower courts overlooked this agreement to return assets. In so doing, the lower courts flouted the intent of the Algerian Accords.

Collateral inquiries on purported due process and fair trial issues have no role in this case. By raising and relying upon such collateral matters, the lower courts erred.

III.

THE ALGERIAN ACCORDS ARE NOT THE BANKS' SOLE SOURCE OF ACCESS TO UNITED STATES COURTS. THE ALGERIAN ACCORDS PRESUME ACCESS EXISTS. THE ACCORDS COMMAND ENFORCEMENT OF JUDGMENTS.

Shams misinterprets *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551 (2d Cir. 1988), *cert. denied*, 489 U.S. 1081 (1989) in stating that the Algerian Accords merely provide access to United States Courts which would otherwise be unavailable. (Opposition at 9-10.)

The Islamic Republic of Iran and its nationalized entities, like the Banks, could properly proceed in United States courts before the Algerian Accords. The United States Government has so confirmed.[1]

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1. The Brief filed on behalf of the United States Government as *Amicus Curiae* in *National Petrochemical* clearly indicates the Executive Branch of the United States Government recognized the then government of Iran on February 16, 1979, prior to adoption of the Algerian Accords. The United States Government's firm statement on the issue, which is in line with the *National Petrochemical* court's ultimate decision on the issue, refutes Shams' bald assertion regarding the Accords.

(Cont'd)

The Algerian Accords do not themselves grant access to United States Courts. In Point IV, Paragraphs 12 and 14, access is presumed. The Algerian Accords go beyond discussing court access to state an independent command for enforcement of

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(Cont'd)

The United States Government's *Amicus Curiae* brief stated in pertinent part, at page 9:

> [footnote 10:]
>
> *See* J. Hervey, *The Legal Effects of Recognition in International Law* 3 (1928) ("courts are unanimously agreed that recognition by the political departments of the government is binding upon the courts. They cannot enter into an independent examination in order to determine for themselves which is the lawfully instituted government in a designated territory . . . .")
>
> • • •
>
> [full text:]
>
> *II. The Government of Iran and its Instrumentalities are Entitled to Access to U.S. Courts*
>
> The Executive Branch made a formal statement of recognition and instituted diplomatic relations with the first revolutionary government of Iran, that of Mehdi Bazargan, on February 16, 1979. On that date, State Department press spokesman Hodding Carter III stated as follows: [footnote 11 omitted]
>
> > Our ambassador has relayed to the Government in Iran our intention to maintain diplomatic relations with that Government. This is the formal declaration that our relations do continue . . . . It [the Ambassador's statement] recognizes the government which is in power in Iran, which is headed by Prime Minister Bazargan . . . . We recognize that Government. They will have to say what the status of the Shah is.

Iranian decrees and judgments. Shams' arguments and authority to the contrary are misplaced and deserve no weight.

IV.

THE BANKS' SHOWING SATISFIED THE MISPLACED DUE PROCESS INQUIRY AND THE *CELOTEX* STANDARD.

Shams attempts to read more into the Banks' citation from *Celotex Corp. v. Catrett*, 477 U.S. 321, 324 (1986) than is actually there. (Petition at 11; Opposition at 10-11.) The citation is a binding Supreme Court interpretation of Federal Rule of Civil Procedure 56 on summary judgment. The *Celotex* Court clearly ruled that submissions in opposition to summary judgment need not be evidence admissible at trial to be sufficient to preclude summary judgment. The Banks' information and belief submission satisfies the *Celotex* standard. A genuine issue of material fact exists to preclude summary judgment. The lower courts' rulings to the contrary ignore the precedent of *Celotex*.

V.

THE LOWER COURTS DID NOT RULE ON ISSUES OTHER THAN THE DUE PROCESS/FAIR TRIAL ISSUE.

The courts below ruled solely based on what they perceived to be the inability to receive a fair trial in the Islamic Republic of Iran. The courts relied solely on generalized government reports which had no relation to the claims subject to the instant action. Contrary to Shams' mistaken contention that the Banks did not object to the reports (Opposition at 6), the Banks did object.[2] The

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2. The Banks filed with the trial court written objection to the government reports which Shams relied upon. The objection preceded the first

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generalized government reports proved nothing about the Iranian proceedings which underly the instant case, despite Shams' contentions. (Opposition at 12.)

VI.

THERE IS NO PRIOR DISPOSITIVE RULING BASED ON THE ALGERIAN ACCORDS.

The issue presented by this case has not been decided before.

Shams cites several cases for the mistaken proposition that the result in the instant case is compelled by prior decisions. None of the cases Shams cites involved use of due process analysis to derail a judgment enforcement action under the Algerian Accords.

The decisions in *Islamic Republic of Iran v. Pahlavi,* 62 N.Y. 2d 474, 478, N.Y.S. 2d 597, 467 N.E. 2d 245 (1984), *cert. denied,* 469 U.S. 1108 (1985); and *Islamic Republic of Iran v. Pahlavi,* 473 N.Y.S. 2d 801 (1984), *aff'd mem.,* 486 N.Y.S. 2d 939, 476 N.E. 2d 338 (1985), concerned application of the doctrine of *forum non conveniens.*

The decision in *Islamic Republic of Iran v. Pahlavi,* 160 Cal. App. 3d 620, 206 Cal.Rptr. 752 (1984) concerned California state law standards for service of process.

Discovery sanctions were the issue in *Islamic Republic of Iran v. Pahlavi,* WEC 69489 (Cal. Superior Ct.), *judgment of dismissal aff'd,* 3d Civil No. B072484 (Cal. Ct. App.), *cert. denied,* __ U.S. __, 130 L. Ed. 2d 420, 115 S. Ct. 513 (1994).

(Cont'd)
hearing before the trial court on March 29, 1993. *See* Opposition to Defendant's Motion to Dismiss Complaint; Memorandum of Points and Authorities in Support Thereof, dated March 10, 1993, at pages 2 and 10-13.

VII.

NO STATE LAW ISSUE CONTROLS THE OUTCOME OF THIS CASE.

Shams hints in the Opposition that the Banks' complaint was untimely. (Opposition at 6.) Shams is mistaken.

Shams also contends that the Uniform Foreign Money Judgments Recognition Act, codified in California as Code of Civil Procedure Sections 1713 *et seq.*, provides an independent basis for the lower courts' rulings. (Opposition at 8 and Appendix A.) This is also incorrect.

The instant action arises under the Algerian Accords, a federal executive agreement. As federal law, the Algerian Accords are supreme to state law. United States Constitution Article VI.

Shams contends that California Code of Civil Procedure Section 343 is the controlling limitation period. Assuming *arguendo* that a limitation period applies, it is California Code of Civil Procedure Section 337.5 which provides for a ten (10) year limitation period. The Algerian Accords provide no limitation period. The Banks' action is timely under Section 337.5.

CONCLUSION

For the foregoing reasons, and those stated in the Petition for Writ of Certiorari, the Petition should be granted.

Dated: October 25, 1995

Respectfully submitted,

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